

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3362 of 1993

Date of decision: 24-7-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ASHOKKUMAR B.CHANDALIA

Versus

BHAVNAGAR MUNICIPAL CORPN.

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Appearance:

MR KC YAJNIK for Petitioner

MR JR NANAVATI for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner, Transport Manager of the respondent corporation challenges the order dated 12th April, 1993 under which he was placed under suspension from service in purported exercise of powers under section 56 of the Bombay Provincial Municipal Corporation Act, 1949. It is not in dispute that the petitioner was placed under suspension in contemplation of departmental enquiry against him for serious charges of fabrication of 292 vouchers for Rs.2,74,630/-, which has resulted in heavy financial loss to the Corporation. It is also not in dispute that in connection with the aforesaid serious misconduct charge sheets were given to the petitioner on 20th April, 1993 and criminal case has also been lodged for the offence of misappropriation of Rs.2,74,630/by fabricating false receipts.

2. However, counsel for the respondent admits that the inquiry has not been finally concluded. The contention of the counsel for the petitioner is that under section 56 of the aforesaid Act the respondent has no power to place the Transport Manager under suspension. It has next been contended that under section 50 though there is power with the respondents to initiate departmental enquiry against the petitioner and on charge proved against him penalty can be given, but even under the said provisions respondent is not empowered to place the transport manager under suspension.

3. On the other hand Shri J. R.Nanavati, counsel for the respondent submitted that on 12th April, 1993 when the order impugned in the special civil application was made the Corporation's elected body was not functioning and all the powers of the Corporation vested in the Administrator and that is how the order has been passed by the Administrator. It has next been contended that section 56 provides that the transport manager may not be placed under suspension by the Standing Committee, though all other officers can be placed under suspension by the said authority. Reading of the provisions of section 56 gives out that the power to place the transport manager under suspension is only with the Corporation. To run the administration of the Corporation smoothly there is delegation of powers and

under section 56 of the Act. Standing Committee has been given the power to place under suspension officers appointed by the Corporation except Transport Manager. Under that provision the Standing Committee can exercise power pending order of the Corporation and such order and reasons thereof has to be forthwith reported to the Corporation. It has next been contended that otherwise also the appointing authority has inherent power to place the officers or employees under suspension in case of grave and serious misconduct where enquiry is conducted. So far as enquiry is concerned, the counsel for the respondents very fairly submitted that it will be completed within reasonable time granted by this Court.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Section 56 of the Act provides that any officer appointed by the Corporation excepting the Transport Manager can be suspended by the Standing Committee, pending an order of the Corporation. Such order of suspension and reasons thereof are to be forthwith reported to the Corporation. The power to place under suspension all the officers is vested in the Corporation, but under the said provision that power can be given to the Standing Committee for taking immediate action. From the exercise of powers by the Standing Committee, Transport Manager has been kept out of purview. But the power of the Corporation is there to place Transport Manager under suspension. Learned counsel for the petitioner has failed to site any provision from the Act where there is specific provision that the Transport Manager cannot be placed under suspension. That could not be the intention of the legislature also that the transport manager in all eventuality cannot be placed under suspension though he may be given charge sheet for grave misconduct of misappropriation of the amounts of the Corporation by fabricating false vouchers. Section 56 of the Act cannot be read in the way in which it is sought to be read by the counsel for the petitioner. 'Transport Manager' has to be read in the context that the Standing Committee has no power to place Transport Manager under suspension, but this power of the Corporation to place Transport Manager under suspension is not taken away. Otherwise also I find sufficient merits in the contention of the counsel for the respondents that there is implied inherent power of the employer to place its officer under suspension where there are serious and grave charges of misconduct during the pendency of the enquiry. Admittedly petitioner has been placed under suspension in contemplation of departmental enquiry and the charge

sheet has already been served. There are very serious charges against the petitioner of misappropriation of the Corporation's money by fabricating documents. In a case where there are serious charges of misappropriation, embezzlement, coupled with the charge of fabrication of documents the officer normally should not be allowed to continue on the post; and in such cases the rule is to place such officer under suspension. Suspension of an officer, otherwise also, is not open to judicial review in all the cases and the court has very limited powers. It is not the case where it can be said that there is no evidence whatsoever against the petitioner in respect of the charges framed against him. It is also not the case of the petitioner that the charges are taken on the face value, even then it cannot be said that he has committed any misconduct. Over and above that it is also not the case that the petitioner's suspension is made in mala fide exercise of power. The charges are of very serious nature and otherwise also it cannot be in public interest to continue such an officer in service. Such an officer should be kept away from service pending enquiry. Otherwise, leaving apart further misconduct, he may be in a position to influence the witnesses.

5. Taking into consideration the totality of the facts of this case no interference of this court is called for in this matter. The special civil application deserves to be dismissed and the same is accordingly dismissed. However, the action of the respondents in not completing the enquiry for more than three years cannot be appreciated. Whatever may be the nature of the charges and whatever post the petitioner holds, after placing him under suspension all endeavour should have been made by the respondents to complete the enquiry within reasonable time. Three years' period cannot be said to be a reasonable time. Once the Officer is placed under suspension enquiry should be completed expeditiously. That process has not been done in the present case. It is not the case of the respondents that the petitioner is not cooperating in the enquiry. Keeping a person under suspension for years together without completing enquiry deserves criticism, and the Corporation being 'State' or agency of State within the meaning of Article 12 of the Constitution of India it has to act fairly and reasonably and further as a model employer. Otherwise also to continue an officer under suspension against whom charges of misappropriate are there is not in public interest. If the charges are proved, certainly the only penalty would have been dismissal or removal from service and in case longer time

is taken in the enquiry then that officer will get suspension allowance from the public exchequer, which amount otherwise could be utilized for public purpose. So either way it is not in the larger interest of public to sit over the enquiry. The respondents are directed to complete the enquiry initiated against the petitioner within a period of five months from the date of receipt of certified copy of this order, failing which it shall be open to the petitioner to move an application for revival of this special civil application. However, it is made clear that the petitioner shall fully cooperate with the enquiry officer in the matter for completing the enquiry. Rule is discharged, subject to the aforesaid direction. No order as to costs.

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